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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/710,636

07/26/2004

Serena Giori

4635

7590

03/08/2007

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

MAIL DATE

DELIVERY MODE

03/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/710,636	<b>Applicant(s)</b> GIORI ET AL.	
	<b>Examiner</b> Christopher P. Bruenjes	<b>Art Unit</b> 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: none.  
 Claim(s) objected to: none.  
 Claim(s) rejected: 1-4.  
 Claim(s) withdrawn from consideration: none.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see continuation sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_

**ADVISORY ACTION**

**WITHDRAWN REJECTIONS**

1. The 35 U.S.C. 103 rejections of claims 1-4 over Nomi in view of von Fragstein et al have been withdrawn due to Applicant's arguments in the Paper filed February 25, 2007.

**REPEATED REJECTIONS**

2. The 35 U.S.C. 103 rejections of claims 1-4 over Nomi in view of Nowakowski are repeated for the reasons set forth in the previous Office Action mailed January 3, 2007, Pages 5-7 Paragraph 6.

**Response to Arguments**

3. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 1-4 over Nomi in view of von Fragstein et al have been considered but are moot since the rejections have been withdrawn.

4. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 1-4 over Nomi in view of Nowakowski have been fully considered but they are not persuasive.

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In response to applicant's argument that there is no motivation to combine Nomi and Nowakowski, Nowakowski teaches that the nonporous membrane of Nowakowski retains fluids and prevents ingress of bacteria. Although Nowakowski teaches that the nonporous layer is preferable to the microporous layer because of its elastic properties, Nowakowski does teach that the nonporous layer of Nowakowski is an essential feature of the backing layer, because it is effectively an impermeable barrier that retains fluids and prevents ingress of bacteria (col.2, 1.43-47). Although the patent Nowakowski compares his nonporous membrane to states that it provides resistance to bacteria penetration, this does not mean the previous patent prevents bacteria from ingress through the microporous membrane. Resistance in the art is not impermeability but only that the membrane hampers bacteria ingress. Furthermore, one of ordinary skill in the art at the time applicant's invention was made would have realized that as the body fluids filled the foam the backing layer would still be exposed to liquids even though they are not placed directly over exudating wounds. Therefore, the nonporous membrane of Nowakowski is essential to preventing bacteria from ingress through the membrane because the microporous membrane taught in the previous patent only described its bacteria penetration properties as resistant.

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In response to Applicant's argument that the combination would not result in the a portable container with the required cooling ability, the back layer film of Nowakowski and applicant's claimed membrane have substantially the same composition and structure, therefore there is a sound basis for the suggestion that the properties would be the same. When a sound basis is presented the burden is shifted to the applicant to present evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. MPEP 2112.01 I.

In response to Applicant's argument that there is a presence of long-felt need, a showing of a solution of a long-felt need must be factually supported by an appropriate affidavit or declaration to be of probative value. See MPEP 716.01(c).

#### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

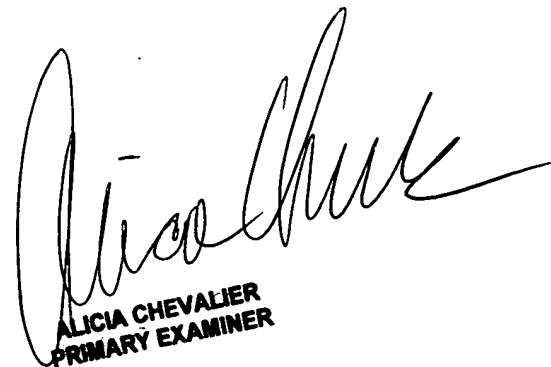
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB *CPB*  
March 2, 2007

  
ALICIA CHEVALIER  
PRIMARY EXAMINER